* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ W.P.(C) 6163/2007

Ex. GC Raghav Singh ... Petitioner through
Col. R.S. Kalkal, Adv.

versus

Union of India & Ors. ... Respondent through
Ms. Saroj Bidawat with
Major S.S. Pandey,Adv.

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE S.L.BHAYANA

O R D E R

% 22.08.2007

1. Whether reporters of local papers may be allowed to see the Order ? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Order should be reported in the Digest? Yes

The Petitioner prays for the issuance of a writ in the nature of mandamus directing the Respondents to release 25 per cent Disability Pension or release the service element of Pension in favour of the Petitioner. The prayer for disability pension, however, has not been pressed before us by learned counsel for the Petitioner since the Report/Findings of the Medical Board are akin to those recorded in CW 12460/2005. Arguments were restricted to the release of the service element of pension.

The facts of the case are that the Petitioner was selected as a Technical Graduate for direct entry into the Indian Military Academy (IMA), Dehradun on 3.6.2003. It has been highlighted that the Medical

Board, which examined the Petitioner, did not make any note in the Medical Enrollment Form of the existence of any disease. The Petitioner joined the IMA on 10.7.2003. It has been incorrectly mentioned in the Petition that from October, 2003 the Petitioner started having health problems and he reported to Medical Authorities in the Army for treatment. It is, however, correct that the Petitioner was diagnosed as suffering from Acyanotic Heart Atrial Septal Defect. The Petitioner, who is a Cadet, was invalidated as being low medical category 'EEE' on 22.10.2003.

Learned counsel for the Petitioner has relied on Regulation 423 (c) of the Regulations for the Medical for Services of the Armed Forces, 1983 dealing with “Attributability to Service” which reads as follows:-

> (c) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease, which has led to an individual's discharge or death, will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have risen during service.

Learned counsel has emphasised on the fact that the Medical Board has not answered Paragraph 11 and 12 of Part III of their Memo of Proceedings which contemplate whether the disability is attributable to service or whether the disability is aggravated by service. We have perused the Medical Board proceedings which merely mention the disability as Congenital Acyanotic Heart Atrial Septal Defect, with a disability of 11 to 14 per cent. Learned counsel for the Petitioner has belaboured the point that it was essential for the Respondents to have duly filled-up paragraphs 11 and 12 mentioned above.

In this context we take serious note of the fact that the Petitioner has not approached this Court with clean hands. The Petitioner had earlier filed CW 12460/2005 which was dismissed as withdrawn on 18.7.2006 with the noting that the Petitioner intended to approach the Appellate Medical Board. It is only the proceedings of the Appellate Medical Board which have been filed with this Petition. In the Counter Affidavit to CW 12460/2005 the Respondents had filed copies of the Medical Proceedings which also records the disability to be Congenital Acyanotic Heart Atrial Septal Defect. In response to Paragraph 11 of Part III it had been specifically recorded that the disability of the Petitioner was not attributable to service. The 'Summary and Opinion' is appended to those Medical Board proceedings which recorded that the Petitioner, who was a 23 year old Gentleman Cadet (G.C.), had been detected to have Cardiac Murmur

during Re-Medical Exam on 4.9.2003; that he had not reported sick during his 1-1/2 months of training; that his ailment was congenital; that he needed to undergo closure of ASD. Hence, it was recommended that the Gentleman Cadet/Petitioner be invalidated out of service. It has been specifically recorded that - “disability not attributable and not aggravated by service”. We are of the view that the failure to place this Medical Report in the second Writ Petition with which we are presently dealing as deliberate and intentional. This would constitute sufficient reason for us to dismiss the Petition.

Be that as it may, we are of the view that the Petitioner cannot rely on Regulation 423(c) for two reasons, firstly because his disability is avowedly congenital and secondly because the Petitioner took no medical treatment during his Training. Had the Training triggered of the ailment it should have manifested itself and would not have remained hidden or latent. In fact, the medical problem of the Petitioner was detected in a routine examination. It is also not right to contend that if any disability is not detected during the medical examination conducted at the time of recruitment, the only conclusion that can be drawn is that any medical ailment discovered thereafter must be either attributable to service or aggravated by service. By operation of Regulation 423(c) the onus of substantiating that the disability was attributable or was aggravated due to service shifts to the Respondents. This conclusion will have to be drawn on a case to case basis. 'Congenital' has been defined in the Concise Oxford

Dictionary as a disease or abnormality present from birth. The Collins Cobuild English Dictionary states that a congenital disease or medical condition is one that a person has from birth. Therefore, so far as such a health affliction is concerned, it can at best be aggravated by service. The material available on the record does not indicate this to have happened.

Learned counsel for the Petitioner has relied on the decision of the Division Bench in WP(C) No.10837/2004 titled Ex. GNR Lakhi Ram -vs- UOI & Ors. without showing how the Judgment is applicable to the facts of the present case. He has also placed on record a copy of the Notice issued in Special Leave to Appeal (Civil) No.19277 of 2006 without also showing how that decision has a bearing to the facts of the present case. Finally, reliance has been placed on Rule 114 of the Pension Regulations for the Army, 1961 which reads thus - “An officer cadet drawn from the ranks shall continue to be eligible for pensionary benefits appropriate to his rank”. While interpreting this provision it would be fatal to lose sight of the word 'continue', which obviously refers to the years of service already put in by a person in any of the ranks below the commissioned ones. It has no relevance to fresh recruits. This Rule has palpably no application to Petitioner Gentleman Cadet since he is not 'an officer cadet drawn from the ranks'.

Reliance on Rule 14 of the Entitlement Rules for Casualty Pensionary Awards, 1992 is also of no avail to the Petitioner. As has already been noted above it is categorically recorded that the

Petitioner's ailment is congenital and that he did not receive any treatment while in training. Obviously, it was neither attributable nor aggravated by his service.

The Petitioner has willfully concealed relevant documents from this Court . The Petition is devoid of merit and is dismissed with costs of Rs.5,000/-.

VIKRAMAJIT SEN,J

S.L.BHAYANA, J

AUGUST 22, 2007
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